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ACTIVISION BLIZZARD, INC. and  
ACTIVISION PUBLISHING, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIL-SPEC MONKEY, INC., a California  
corporation,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC., a Delaware  
corporation; ACTIVISION PUBLISHING,  
INC., a Delaware corporation; and DOES 1 -  
25, inclusive,

Defendants.

CASE NO. CV14-02361 RS

**DECLARATION OF MARC E. MAYER  
IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT AS  
TO PLAINTIFF'S SECOND, THIRD,  
FOURTH, AND FIFTH CLAIMS FOR  
RELIEF**

Date: November 20, 2014  
Time: 1:30 p.m.  
Judge: Hon. Richard Seeborg

1 I, Marc E. Mayer, declare as follows:

2  
3 1. I am an attorney at law, duly licensed to practice law in the State of California. I  
4 am, through my professional corporation, a partner at the law firm Mitchell Silberberg & Knupp  
5 LLP, counsel of record for Defendants Activision Blizzard, Inc. and Activision Publishing, Inc.  
6 (“Activision”). I have personal knowledge of the following facts and, if called as a witness, could  
7 and would competently testify thereto.

8  
9 2. In conjunction with Activision’s motion for partial summary judgment, I have  
10 participated in the identification, acquisition, and preservation of reference material pertaining to  
11 this matter, including the supervision of others in these activities. The following are exhibits that  
12 my office has gathered.

13  
14 3. Attached hereto as **Exhibit 7** is a true and correct copy of a web page found at the  
15 following uniform resource locator (“URL”) –  
16 [https://www.google.com/search?q=define%3A+morale+patch&sourceid=ie7&rls=com.microsoft:](https://www.google.com/search?q=define%3A+morale+patch&sourceid=ie7&rls=com.microsoft:en-us:IE-Address&ie=&oe=&gws_rd=ssl)  
17 [en-us:IE-Address&ie=&oe=&gws\\_rd=ssl](https://www.google.com/search?q=define%3A+morale+patch&sourceid=ie7&rls=com.microsoft:en-us:IE-Address&ie=&oe=&gws_rd=ssl) – regarding the definition of morale patches, which I  
18 caused to be accessed and printed on or about October 7, 2014.

19  
20 4. Attached hereto as **Exhibit 8** is a true and correct copy of a web page found at the  
21 following URL – <http://www.policepatcheshq.com/velcro-patches/> – regarding the usage, purpose,  
22 and collectability/tradability of morale patches, which I caused to be accessed and printed on or  
23 about October 3, 2014.

24  
25 5. Attached hereto as **Exhibit 9** is a true and correct copy of a web page found at the  
26 following URL – <http://www.itstactical.com/centcom/news/exploring-the-military-history-and->  
27

1 symbolism-of-morale-patches/ – regarding the usage and purpose of morale patches, which I  
 2 caused to be accessed and printed on or about October 7, 2014.

3  
 4 6. Attached hereto as **Exhibit 10** is a true and correct copy of a web page found at the  
 5 following URL – <http://www.army.mil/symbols/> – concerning the use of morale patches by  
 6 soldiers, which I caused to be accessed and printed on or about October 7, 2014.

7  
 8 7. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the  
 9 following book: Trevor Paglen, I Could Tell You But Then You Would Have To Be Destroyed  
 10 By Me: Emblems from the Pentagon's Black World at pp. 8-9 (2010 ed.). Upon request, a  
 11 physical copy of the full work can be furnished to the Court.

12  
 13 8. Attached hereto as **Exhibit 12** is a true and correct copy of a web page and  
 14 compilation of images on Mil-Spec Monkey, Inc.'s website depicting persons and soldiers  
 15 wearing morale patches, including MSM's "Angry Monkey" patch. The web page is located at  
 16 the following URL – [http://milspecmonkey.com/index.php/morale-page/morale-patches/66-](http://milspecmonkey.com/index.php/morale-page/morale-patches/66-morale-page)  
 17 [morale-page](http://milspecmonkey.com/index.php/morale-page/morale-patches/66-morale-page) – which I caused to be accessed and printed on or about October 7, 2014. Also  
 18 included in this compilation are the full versions of individual images contained on this web page  
 19 under the caption "Happy Customers."

20  
 21 9. Attached hereto as **Exhibit 13** is a true and correct copy of a compilation of web  
 22 pages found at the following URLs listed below (all of which I caused to be accessed and printed  
 23 on or about September 16-17, 2014 and October 7, 2014), which depict patches offered for sale  
 24 online from the following sources:

- 25 • 511tactical.com: [http://www.511tactical.com/accessories/tactical-](http://www.511tactical.com/accessories/tactical-patches.html?limit=all)  
 26 [patches.html?limit=all](http://www.511tactical.com/accessories/tactical-patches.html?limit=all)
- 27 • Amazon.com: <http://www.amazon.com/s/?ie=UTF8&keywords=morale+patch>

- 1 • Gadsdenandculpeper.com: <http://www.gadsdenandculpeper.com/wildlife.html>
- 2 • Maxpedition.com: [http://www.maxpedition.com/store/pc/All-Morale-Patches-](http://www.maxpedition.com/store/pc/All-Morale-Patches-c43.html)
- 3 [c43.html](http://www.maxpedition.com/store/pc/All-Morale-Patches-c43.html)
- 4 • Tacticalgearjunkie.com: <http://www.tacticalgearjunkie.com/patches/?sort=bestselling>
- 5 • USpatriottactical.com: <http://uspatriottactical.com/morale-patch-mil-spec-monkey/>
- 6 • Usamilitarymedals.com: [http://www.usamilitarymedals.com/military-awards-](http://www.usamilitarymedals.com/military-awards-decorations/military-patches.html)
- 7 [decorations/military-patches.html](http://www.usamilitarymedals.com/military-awards-decorations/military-patches.html)
- 8

9 10. Attached hereto as **Exhibit 14** is a true and correct copy of a compilation of web  
 10 pages found at the following URLs – <http://milspecmonkey.com/store/24-animals> and  
 11 <http://milspecmonkey.com/store/9-patches> – listing the patches on MSM’s website, which I  
 12 caused to be accessed and printed on or about September 18, 2014 and October 8, 2014.

13  
 14 11. Attached hereto as **Exhibit 15** is a true and correct copy of a web page found at the  
 15 following URL – <http://www.monkeydepot.com/SearchResults.asp?mfg=Monkey+Gear> – listing  
 16 the patches on the “Monkey Depot” website depicting a “Greaser Monkey” and “Maverick  
 17 Monkey,” which I caused to be accessed and printed on or about October 7, 2014.

18  
 19 12. Attached hereto as **Exhibit 16** is a true and correct copy of a web page found at the  
 20 following URL – <http://www.callofduty.com/ghosts/features/mp/customization> – regarding a  
 21 description of the soldier-appearance customization options available in *Call of Duty: Ghosts*,  
 22 which I caused to be accessed and printed on or about October 7, 2014.

23  
 24 13. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the  
 25 following book: Timothy Ford, Defender: An Illustrated Guide to United States Air Force, Air  
 26 Police, Security Police and Security Forces Patch Insignia at pp. v, 6-7, 86-89, 132-33, 192-93,  
 27 222-223 (2010 ed.). Upon request, a physical copy of the full work can be furnished to the Court.

14. Attached hereto as **Exhibit 18** is a true and correct copy of a compilation of web pages found at the following URLs listed below (all of which I caused to be accessed and printed on or about October 14, 2014), which depict images of soldiers wearing patches on their uniforms from the following sources:

- Amc.af.mil : <http://www.amc.af.mil/shared/media/photodb/photos/2013/03/130323-F-LR266-142.JPG>
- Servimg.com : <http://i43.servimg.com/u/f43/15/03/57/94/screen84.jpg>;  
<http://i43.servimg.com/u/f43/15/03/57/94/screen54.jpg>;  
<http://i78.servimg.com/u/f78/13/87/79/34/24499010.jpg>
- Blogspot.com: [http://3.bp.blogspot.com/-2YBkG5MREU0/TzrLfFq-tNI/AAAAAAAAADTg/baVG-izdamo/s1600/\\$\(KGrHqIOKjwE44pJJ6-D..](http://3.bp.blogspot.com/-2YBkG5MREU0/TzrLfFq-tNI/AAAAAAAAADTg/baVG-izdamo/s1600/$(KGrHqIOKjwE44pJJ6-D..)
- Dailymail.co.uk: [http://i.dailymail.co.uk/i/pix/2013/08/10/article-2388698-1B3B0048000005DC-776\\_634x417.jpg](http://i.dailymail.co.uk/i/pix/2013/08/10/article-2388698-1B3B0048000005DC-776_634x417.jpg)
- Ebay.com:  
[http://i.ebayimg.com/00/s/NTgwWDc1OA==/\\$T2eC16dHJF8E9nnC8H5iBQ1D26!5mw~~60\\_35.JPG](http://i.ebayimg.com/00/s/NTgwWDc1OA==/$T2eC16dHJF8E9nnC8H5iBQ1D26!5mw~~60_35.JPG)
- Stripes.com:  
[http://www.stripes.com/polopoly\\_fs/1.21039.1273609579!/image/3402761125.jpg\\_gen/derivatives/landscape\\_804/3402761125.jpg](http://www.stripes.com/polopoly_fs/1.21039.1273609579!/image/3402761125.jpg_gen/derivatives/landscape_804/3402761125.jpg)
- Gannet-cdn.com: <http://www.gannett-cdn.com/-mm-/fb1cd06f6910cb0cc6ef3c5e9508750419fef419/c=184-0-1864-1260&r=x404&c=534x401/local/-/media/Rochester/2014/08/18/roc0819soldierspatch.jpg>
- Usarmy.vo.llnwd.net: <http://usarmy.vo.llnwd.net/e2/-images/2009/05/06/37099/size0-army.mil-37099-2009-05-06-070521.jpg>; <http://usarmy.vo.llnwd.net/e2/->

1 [images/2009/08/17/48201/size0-army.mil-48201-2009-08-17-180828.jpg](http://images/2009/08/17/48201/size0-army.mil-48201-2009-08-17-180828.jpg):

2 <http://usarmy.vo.llnwd.net/e2/c/images/2013/04/03/289088/size0.jpg>

- 3 • Wikimedia.org:

4 [http://upload.wikimedia.org/wikipedia/commons/7/72/Combat Training in Germany](http://upload.wikimedia.org/wikipedia/commons/7/72/Combat_Training_in_Germany_(Securing_Ground)_2007-05-11-140634.jpg)  
5 [\(Securing Ground\) 2007-05-11-140634.jpg](http://upload.wikimedia.org/wikipedia/commons/7/72/Combat_Training_in_Germany_(Securing_Ground)_2007-05-11-140634.jpg)

- 6 • Forthoodpresscenter.com:

7 <http://www.forthoodpresscenter.com/clients/3439/607813.jpg>

- 8 • Ndguard.ngb.army.mil:

9 [http://www.ndguard.ngb.army.mil/news/NewsPhotos/2010Photos/7July2010/10-](http://www.ndguard.ngb.army.mil/news/NewsPhotos/2010Photos/7July2010/10-115%20%20Soldiers,%20%20Missions/8-Soldiers-046.gif)  
10 [115%20%20Soldiers,%20%20Missions/8-Soldiers-046.gif](http://www.ndguard.ngb.army.mil/news/NewsPhotos/2010Photos/7July2010/10-115%20%20Soldiers,%20%20Missions/8-Soldiers-046.gif)

- 11 • Kittyhell.com: [http://www.kittyhell.com/wp-content/uploads/2008/12/hello-kitty-](http://www.kittyhell.com/wp-content/uploads/2008/12/hello-kitty-military-patch-uniform.jpg)  
12 [military-patch-uniform.jpg](http://www.kittyhell.com/wp-content/uploads/2008/12/hello-kitty-military-patch-uniform.jpg)

- 13 • Veteranshour.com: <http://www.veteranshour.com/r5T-002a.jpg>

- 14 • Cojmc.unl.edu: [http://cojmc.unl.edu/mosaic/wp-content/uploads/2014/04/Abdul-in-](http://cojmc.unl.edu/mosaic/wp-content/uploads/2014/04/Abdul-in-group.jpg)  
15 [group.jpg](http://cojmc.unl.edu/mosaic/wp-content/uploads/2014/04/Abdul-in-group.jpg)

16  
17 I declare under penalty of perjury under the laws of the United States of America that the  
18 foregoing is true and correct.

19  
20 Executed on this 16th day of October 2014 at Los Angeles, California.

21  
22 /s/ Marc E. Mayer

23 Marc E. Mayer  
24  
25  
26  
27